

**Letter RA-5 – State of California Attorney General Xavier Becerra**

- RA-5-1** The comment provides introductory statements to the comment letter. This comment indicates that the Attorney General’s office has reviewed the 2019 Recirculation Package for the proposed Project and alerted the County that the Attorney General would be submitting comments on the 2019 Recirculation Package. The comment does not raise an issue regarding the adequacy of environmental analysis; therefore, no further response is provided.
- RA-5-2** This comment indicates that the Attorney General is providing comments pursuant to his independent duty to protect the environment and natural resources of the state. The comment does not raise an issue regarding the adequacy of environmental analysis; therefore, no further response is provided.
- RA-5-3** This comment refers to the destructive wildfires that occurred in 2018 and 2019 in various parts of the state and indicates that more frequent wildfires are anticipated throughout the state in coming years. According to the comment, this likelihood of increased fire occurrence requires that local jurisdictions carefully review and consider new developments in fire-prone areas. The comment stresses that such “careful review” is especially important when a project is proposed in the wildland-urban interface or other undeveloped or remote areas, such as the proposed Project.

The County agrees with the comment, which is why it required a fire impact analysis in the Otay Ranch Resort EIR and a Fire Protection Plan (FPP) to demonstrate that the proposed Project meets or exceeds the regulatory requirements for projects in the wildland urban interface. In addition, San Diego County Fire Authority, with the assistance of CalFire and a 3<sup>rd</sup> party private consulting firm, is preparing a “Wildland Urban Interface” (WUI) pre-fire plan for the area. The WUI plan will provide emergency responders and managers the critical operational response strategies and approaches they need to implement successful fire attack and citizen evacuations.

The County would also note that development in the Village 13 area has been anticipated since at least 1993 when it was included in the Otay Ranch General Development Plan/Subregional Plan. In addition, the proposed Project was contemplated as a “hardline” development when the County, the State of California (through the Department of Fish and Wildlife), and the United States Fish and Wildlife designed and adopted the Multiple Species Conservation Program (MSCP) County Subarea Plan in 1997. In fact, the preserve area to be assembled pursuant to the MSCP depends in part on the development of the proposed Project, because the proposed Project, if approved, must convey significant acreage to the Otay Ranch Preserve. Once conveyed, this Preserve land will be managed by the Preserve Owner Manager (POM) in perpetuity and will conduct conservation activities, weed abatement, and access control to prevent trespassing which increase the protection of the property from

wildfire. As result, the proposed Project contributes to the Otay Ranch Preserve’s ultimate size, configuration, and habitat values. The County raises these points to ensure that the proposed Project is considered in its full and proper context. The proposed Project is consistent with the County’s long-standing planning vision for this area, does not require a density increase or any similar general plan amendment, and remains integral to the implementation of the County’s MSCP – a plan that was assembled with the full participation and approval of the State of California. The Attorney General’s reasonable concerns about fire safety in the wildland urban interface are appreciated, however, the proposed Project actually helps to implement plans and policies that the State has already adopted and continues to support.

**RA-5-4** This comment provides a brief description of the proposed Project, citing information from the Draft EIR (2015). The comment does not raise an issue regarding the adequacy of environmental analysis; therefore, no further response is provided.

**RA-5-5** This comment provides a brief description of the proposed Project site, citing information from the Draft EIR (2015). The comment does not raise an issue regarding the adequacy of environmental analysis; therefore, no further response is provided.

**RA-5-6** The comment, citing information from the Draft EIR (2015), describes some of the fires that have occurred at the Project site. The comment raises no issue as to the adequacy of the Draft EIR (2015) or those portions of it that were recirculated for additional review; therefore, no substantive response is required. For information purposes, the County would point out that the history of fires at the Project site tend to show that this area is prone to fire not because of development or the existence of urban uses nearby. To the contrary, the fires in question, including the 2007 Harris fire mentioned in Center for Biological Diversity’s (CBD) letter of May 28, 2019, were caused either by lightning or by humans who were trespassing on this remote site. Note also that none of the projects constructed in the Otay Ranch wildland urban interface since 1990 have caused fires or suffered damage from fires.

**RA-5-7** The comment states that the Draft EIR should, but does not, analyze the increased risk of wildfire that will result from siting the proposed development within a high fire sensitivity zone. The County disagrees with the comment for the following reasons.

First, it should be noted that roughly 70 percent of San Diego County is designated as very high fire hazard severity zone (VHFHSZ). The areas that have not received this designation are the urbanized areas. The fact that an area is designated as a VHFHSZ does not preclude development but indicates that additional measures are required to address the increased likelihood of wildfire. The proposed Project incorporates all of the required measures and provides for a comprehensive wildfire protection approach that has been shown to perform well in wildfires. For both the proposed Project and

Alternative H, the development would be constructed in compliance with all applicable fire codes, including those specifically for VHFHSZ areas. Note also that, compared to the originally proposed Project, Alternative H reduces biological/vegetative edge effects by 22,000 linear feet (from 41,000 linear feet to 19,000 linear feet). Alternative H reduces by approximately 50 percent the amount of wildland urban interface compared to the proposed Project and the adopted Otay Ranch land plan for this area. Such a reduction in wildland-urban “edge” improves fire safety by reducing the risk of ignition from activities within the development.

Second, the Draft EIR (2015) did evaluate the proposed Project for its potential to increase fire risk in the area. This analysis set forth in Draft EIR (2015) and 2019 Recirculation Package concludes that the proposed Project and Alternative H would not increase fire risk and will likely reduce the chances of fire ignition. The following policies in the County General Plan Safety Element would be implemented:

**Policy S-3.1: Defensible Development.** Require development to be located, designed, and constructed to provide adequate defensibility and minimize the risk of structural loss and life safety resulting from wildland fires.

**Policy S-3.2: Development in Hillside and Canyons.** Require development located near ridgelines, top of slopes, saddles, or other areas where the terrain or topography affect its susceptibility to wildfires to be located and designed to account for topography and reduce the increased risk from fires.

**Policy S-3.3: Minimize Flammable Vegetation.** Site and design development to minimize the likelihood of a wildfire spreading to structures by minimizing pockets, peninsulas, or islands of flammable vegetation within a development.

**Policy S-3.4: Service Availability.** Plan for development where fire and emergency services are available or planned.

**Policy S-3.6: Fire Protection Measures.** Ensure that development located within fire threat areas implement measures that reduce the risk of structural and human loss due to wildfire.

**Policy S-4.1: Fuel Management Programs.** Support programs consistent with State law that require fuel management/modification within established defensible space boundaries and when strategic fuel modification is necessary outside of defensible space, balance fuel management needs to protect structures with the preservation of native vegetation and sensitive habitats.

In addition, under both the proposed Project and Alternative H, the urban development improvements, along with the new residents, would (i) eliminate existing unauthorized access, including off-highway vehicles, on the Project site, (ii) discourage and reduce

firearm discharges in the vicinity of the Project site, and (iii) ensure the site is policed by law enforcement personnel. These aspects of the proposed Project will diminish existing trespassing on the Project site and the associated fire-ignition risk.

Third, the comment assumes, without evidence, that “locating new development in a high fire sensitivity zone will itself increase the risk of fire and, as a result, increase the risk of exposing residents, employees, and visitors to that increased risk.” As pointed out above, the site has experienced numerous fires in the past, including at least one that burned more than 40,000 acres. This evidence demonstrates that the site, in its undeveloped and remote state, is subject to various fire-ignition sources that are not a result of local urban or higher density residential development. Further, there is no evidence that higher density residential development in San Diego County – including development in the wildland-urban interface – has increased fire-ignition frequency.

In fact, research suggests the opposite: Syphard and Keeley (2015 - Location, timing and extent of wildfire vary by cause of ignition) summarize all wildfire ignitions included in the CAL FIRE Fire and Resource Assessment Program database, dating back over 100 years. They found that in San Diego County, equipment-caused fires were by far the most numerous, and these also accounted for most of the area burned, followed closely by the area burned by power line fires. Ignitions classified as equipment-caused frequently resulted from exhaust or sparks from power saws or other equipment with gas or electrical motors, such as lawn mowers, trimmers or tractors and associated with lower density housing. In San Diego County, ignitions were more likely to occur close to roads and structures, and at intermediate structure densities. One can surmise that part of the reason lower density housing results in increased fire risk compared to higher density housing is that lower density housing creates a wildland urban *intermix* instead of *interface*. The intermix places housing amongst the unmaintained fuels, whereas higher density housing such as that contemplated by the proposed Project converts vegetative fuels into ignition resistant materials (i.e., buildings and streets) within the development footprint and provide a wide, managed, fuel modification zone separating homes from unmaintained fuel thereby creating a condition that is easier to defend. Syphard and Keeley go on to state that “The WUI, where housing density is low to intermediate, is an apparent influence in most ignition maps.” This statement further supports the notion that lower density housing is a larger ignition issue than higher density communities. Syphard and Keeley also state that “Development of low-density, exurban housing may also lead to more homes being destroyed by fire” (Syphard et al. 2013). The study also found that frequent fires and lower density housing growth may lead to the expansion of highly flammable exotic grasses that can further increase the probability of ignitions (Keeley et al. 2012). This is not the case with the proposed Project, as the landscapes are managed and maintained to remove exotic fuels that may establish over time.

Fourth, as discussed in this response to comment, the proposed Project includes compliance with County General Plan safety policies and includes design features that

will reduce unauthorized OHV use, firearm discharges, and trespassing at the site. These elements will diminish the fire-ignition risks typically associated with these activities (i.e., OHV use, firearm discharges, and trespassing).

Based on these facts, the Draft EIR (2015) properly concluded that the proposed Project would not significantly increase the risk of fire-ignition, nor would it increase the fire return interval at or near the Project site, particularly given the Project's measures to minimize the likelihood of ignitions and spread to offsite fuels. Studies indicate that even with older developments that lacked the fire protections provided by the proposed Project, wildfires declined steadily over time (Syphard, et. al., 2007 and 2013). These same studies show that even when the number of fire ignitions increase, the number of acres burned does not. This is due to (i) the conversion of landscapes to ignition resistant materials; (ii) larger maintained areas; (iii) more humans monitoring the site, resulting in early fire detection and discouragement of arson; and (iv) fast response from the fire suppression resources that are located within these developing areas. While it is true that humans are the cause of most fires in California, there is no data available that links increases in wildfires with the development of higher density ignition resistant communities.

Fifth, the proposed Project will include a robust fire protection system, as detailed in FPP. This same robust fire protection system provides protections from on-site fire spreading to off-site vegetation. Accidental fires within the landscape or structures in the proposed Project will have limited ability to spread. The landscape throughout the proposed Project and on its perimeter will be highly maintained and much of it irrigated, which further reduces its ignition potential. Structures will be highly ignition resistant on the exterior, and the interiors will be protected with automatic sprinkler systems, which have a very high success rate for confining fires or extinguishing them. The proposed Project will also include a resident outreach program that raises fire awareness among its residents

Sixth, regarding fire risk to the proposed Project residents, employees and visitors, the Draft EIR (2015) and FPP explain that the proposed Project will not only include a new fire station equipped with its own engine and related fire-fighting equipment; it also will implement Fuel Modification Zones (FMZs) throughout the development, creating a critical fire break between residential structures and flammable vegetation. These facts also support the Draft EIR's (2015) conclusion that the proposed Project will not expose residents, employees or visitors to significant fire risks. Note also that the proposed Project's residential and commercial buildings will be constructed with state-of-the-art, ignition-resistant materials, providing additional protection against fire.

**RA-5-8** The comment states that “[i]t is well-accepted that building in wildland areas increases the risk of fires”. The comment then cites three articles, none of which are from a peer-reviewed scientific journal. The County has examined the articles in question and none

provides any evidentiary or technical support for the proposition that placing ignition resistant, code compliant development projects at the wildland-urban interface increases the risk of fire-ignition. The County is not aware of any study – peer-reviewed or otherwise – that establishes a causal link between development of higher density, planned communities in wildland areas and increases in fire-ignition. More importantly, the County Fire Chief, along with the applicant’s certified fire consulting team, examined the proposed Project, its fire-resistant design features, and the particular environmental setting of the Project site and determined that, at least in this case, the development proposed would not result in significant fire risks to persons, habitat, or property. Note also that the proposed Project’s new fire station will not only bring the entire development within the County’s five-minute response time standard, it will provide additional fire protection services in terms of fast supplemental response resources for existing residences in the general vicinity of the Project site.

**RA-5-9** This comment provides the Attorney General’s interpretation of *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4<sup>th</sup> 369 and the Final Statement of Reasons prepared by the California Natural Resources Agency with regard to amendments to the CEQA Guidelines. The comment does not identify any alleged defect in the Draft EIR and thus does not require a substantive response.

**RA-5-10** This comment quotes statements from the comment letter submitted by CBD, dated May 28, 2019. The County has already responded to the CBD letter, and directs the reader to those responses (please see responses to comment letter RO-4). While CBD claims the Draft EIR (2015) “ignores ... ample scientific evidence linking sprawl development in high fire-prone wildlands with increased fire risk,” the CBD comment letter failed to attach or cite any such evidence. The study by Syphard and Keeley (2015) referenced herein found that lower density projects at the WUI tend to result in increased ignitions. That same study, however, did not find a link between higher density development like the proposed Project and increased ignitions. The County also disagrees that the proposed Project reflects or would facilitate suburban sprawl. As noted in Response to Comment RA-5-3, above, the County’s land planning documents (Otay Ranch General Development Plan/Subregional Plan) have long designated the Project site for residential development and the proposed Project does not seek more units or a larger development footprint than what the County Planning documents contemplate or allow. In fact, the County’s decision to enter into the 1997 MSCP was driven in part by CDFW’s and USFWS’ recognition that a certain amount of development would occur in this part of Otay Ranch in exchange for significant conveyances of private property in to the Otay Ranch Preserve. Nevertheless, the Draft EIR did not ignore the potential for the proposed Project to subject individuals and their property to increased fire risk. Rather, the County studied the issue and required preparation of a FPP, which in San Diego County is a comprehensive plan that analyzes

a site's fire environment along with the project in detail, and then determines through a coordinated effort with County fire protection specialists and professional fire protection planners, the appropriate measures for an appropriately protected community through code requirements and customized fire-safety design features. Only after this assessment was made and the design features imposed did the County conclude that the proposed Project would not result in a significant fire risk to persons or property. CEQA requires nothing more.

**RA-5-11** This comment states that the Draft EIR (2015) fails to adequately analyze the proposed Project's cumulative impact on fire risk. The County disagrees. As explained in Response to Comments RA-5-3 through RA-5-10, the Draft EIR (2015) assessed the proposed Project's potential to significantly increase fire risk in the area. Based on the available evidence, the Draft EIR (2015) concluded that the proposed Project would not result in any such significant impact. The Draft EIR (2015) also determined that the other projects which may be built in this part of Otay Ranch would be subject to the same fire-safety design features that the County has imposed on the proposed Project. For this reason, the Draft EIR (2015) determined that the proposed Project would not contribute substantially to a significant cumulative impact on fire safety. This conclusion is supported by expert opinion and other substantial evidence in the record.

**RA-5-12** This comment criticizes the Draft EIR (2015) for concluding the proposed Project would have less than significant impacts on fire hazards/fire safety. According to the comment, such a conclusion cannot be made in the absence of a final evacuation plan. The County disagrees. Fire evacuations in San Diego County are managed by law enforcement and fire agencies with assistance from a myriad of supporting agencies. These agencies rely on their own internal pre-fire emergency plans and would not utilize a project specific evacuation plan. San Diego County Fire Authority has indicated that the County, , is in the process of preparing these pre-fire plans for WUI areas within the County, including the Project area. These plans focus on operational approach and strategies for fire attack and resident evacuation and are not intended to be publicly available. Evacuation events are very fluid and require ongoing, real-time situation awareness and adaptive decision making. Project- or community-specific evacuation plans should focus on resident awareness and preparedness following the "Ready, Set, Go!" approach.

**RA-5-13** The comment expands on the Attorney General's position that the Draft EIR (2015) requires an emergency evacuation plan that addresses: (1) "evacuation of residents, employees, and guests in the event of a fire;" (2) "the increased challenges that existing users of the roads will face during an evacuation due to the added users;" and (3) "the increased challenges that fire fighters and emergency responders would face in accessing the site and preventing the spread of wildfire due to the simultaneous

evacuation from the Project and neighboring areas”. For this proposition, the comment cites two legal cases – *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5<sup>th</sup> 161 and *California Clean Energy Committee v. County of Placer* (Cal.Ct.App., Dec. 22, 2015, No. CO 72680).

These cases do not support the commenter’s positions. The first case, *Clews Land & Livestock*, does not stand for the proposition that CEQA requires a fire/emergency evacuation plan. To the contrary, the Court in *Clews Land & Livestock* upheld that the City’s Negative Declaration for the project under review, despite the petitioner’s assertion that it (the project) would cause significant fire-related impacts. (*Clews Land & Livestock, supra*, 19 Cal.App.5<sup>th</sup> at pp. 193-195). The court did not require an evacuation plan; nor did it suggest that CEQA demands one. The second case – *California Clean Energy Committee* – was ordered depublished by the California Supreme Court and may not be cited for any legal purpose whatsoever.

With regard to what the comment describes as the three requirements of an adequate evacuation plan, the County responds as follows:

As to the Attorney General’s first assertion, that an evacuation plan should address the evacuation of residents, employees, and guests in the event of fire or other emergency, as previously mentioned, fire-related evacuations fall within the decision-making purview of the County Office of Emergency Services, law enforcement, and fire agencies. Working together, these agencies will determine who should evacuate when, and by what route. In addition, the evacuation orders themselves may change in response to real time wildfire information. For these reasons, it would be disruptive and unhelpful for a project-applicant to devise its own evacuation plan, as it may prove to be inconsistent with the orders issued by the Incident Commander or law enforcement during an actual fire emergency.

The Attorney General’s second assertion is that the project’s evacuation plan should address the challenges faced by non-project users (i.e., existing local residents) of the roads during an emergency/fire event. The County would point out that the County Fire Authority), not individual project applicants, develop the evacuation plans for this and other regions of the County. In addition, it is law enforcement – including the San Diego County Sheriff’s Department– not County Planning & Development Services, which determines whether, how, and by which routes residents and others must evacuate in the event of a fire or other emergency. In the course of an actual emergency, the Sheriff’s Department provide the directives regarding evacuation; an applicant-specific evacuation could conflict with those directives.

The comment also assumes that traffic patterns during a fire or similar emergency are predictable and susceptible to conventional traffic modeling techniques. Such an assumption is false and fails to appreciate the stark differences between standard



commute traffic and emergency traffic. Whereas the former generally follows well-established and historically confirmable patterns that can be relied upon when attempting to model and determine a project's future impacts on road capacity and intersection performance, traffic during emergencies does not. First, emergencies can occur any time day or night, and the associated traffic impacts will differ substantially depending on when the emergency occurs. Second, the nature, size, and intensity of the emergency, along with the amount of time between detection of the emergency and the evacuation order, will all affect which road/routes will be used in the evacuation, how many people must be evacuated, and the overall duration of the evacuation process. The number and range of such variables make it impossible to rationally predict how much a given emergency will affect any particular roadway in terms of traffic congestion. Third, fires and other emergencies, once they start, do not behave in a predictable or steady-state manner. Instead, such events are highly fluid and subject to rapid and dramatic shifts in direction and intensity (e.g., changes in wind direction can dramatically affect the course of a fire). In response to these changes in the behavior of the fire, the relevant law enforcement agency, working with the Incident Commander, will adjust its evacuation orders, thus altering which routes are affected and by how much. Given these multiple contingencies, the exact number of evacuation scenarios is undeterminable, and little would be gained by requiring an EIR to analyze one or two of them.

The commenter's third assertion is that the evacuation plan should analyze the extent to which the proposed Project would degrade the ability of firefighters and emergency responders to gain access to the fire. For the reasons discussed above, such an analysis would be highly speculative. The number of contingent variables is simply too high to conduct such an assessment. However, there are certain known and unchanging facts that indicate the proposed Project will improve firefighters and emergency responders access to any emergency that might occur at or near the Project site. First, the proposed Project will construct all roads, including emergency access roads, to the standards required by the San Diego County Fire Authority, including the addition of two new lanes on Otay Lakes Road (one east bound and one west bound), effectively doubling capacity and providing assurance that at least one lane would be available for fire apparatus ingress while residents were evacuating. This will ensure that fire engines and related equipment can reach the source of the fire as quickly and easily as possible. This is a net-positive change in terms of fire-fighting efficiency and human safety. Second, the proposed Project will construct and equip a new fire station on-site, providing a high-level of emergency response performance currently available in this area of the County. Third, the proposed Project will bring high-pressure water service to the area, including the construction of a five-million gallon on-site water tank, giving fire-fighters additional means to halt a fire should it approach the development. Fourth, the proposed Project will have two means of ingress and egress, which will allow fire-fighting equipment to reach the fire without being unduly hindered by

civilian traffic. Lastly, the proposed Project is located adjacent to the Lower Otay Reservoir providing a substantial supply of water to fight a wildfire.

- RA-5-14** This comment states that there is no basis for deferring completion of the evacuation plan and other fire-related mitigation measures until after project approval. The comment then cites legal authority regarding improper deferral of mitigation measures, including management plans. As explained above, CEQA does not require preparation of project-specific evacuation plans. The Draft EIR (2015) determined that the proposed Project would *not* have a significant impact on fire hazards; thus, no mitigation is required.
- RA-5-15** This comment requests that the County “require” rather than “recommend” that no plant material listed on the “Prohibited Plant List” or “otherwise known to be especially flammable be planted on private lots”. The County will consider this request.
- RA-5-16** The comment provides conclusionary statements. The comment does not raise an issue regarding the adequacy of environmental analysis; therefore, no further response is provided.